

MONTANA LEGISLATIVE HISTORY

Chapter 157 2003

Bill H 156 S _____ Original bill & history ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) 1-15 _____ C

Hearing Date(s) 3-6 _____ C

1-17 _____ C

3-10 _____ C

_____ C

_____ C

_____ C

_____ C

Date Out _____ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

HB 156 INTRODUCED BY MATTHEWS

LC0617 DRAFTER: MACMASTER

CLARIFY YOUTH COURT ACT-REVISE MISDEMEANOR COMMITMENT TO CORRECTIONAL FACILITY

10/29	FISCAL NOTE NEEDED		
12/24	INTRODUCED		
1/02	FISCAL NOTE REQUESTED		
1/02	REFERRED TO JUDICIARY		
1/15	HEARING		
1/15	FISCAL NOTE RECEIVED		
1/16	FISCAL NOTE PRINTED		
1/17	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	15	3
1/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/28	2ND READING PASSED	99	0
1/29	3RD READING PASSED	96	0
	TRANSMITTED TO SENATE		
1/31	REFERRED TO JUDICIARY		
3/06	HEARING		
3/10	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	9	0
3/10	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/12	2ND READING CONCURRED ON VOICE VOTE	48	0
3/13	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/17	2ND READING SENATE AMENDMENTS CONCURRED	100	0
3/18	3RD READING PASSED AS AMENDED BY SENATE	99	0
3/18	SENT TO ENROLLING		
3/21	RETURNED FROM ENROLLING		
3/21	SIGNED BY SPEAKER		
3/22	SIGNED BY PRESIDENT		
3/24	TRANSMITTED TO GOVERNOR		
3/28	SIGNED BY GOVERNOR		
3/28	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 157		
	EFFECTIVE DATE: 10/01/2003 - ALL SECTIONS		

HB 157 INTRODUCED BY HAINES

LC0518 DRAFTER: VANDENBOSCH

REVISE MIGRATORY GAME BIRD LICENSE LAWS

BY REQUEST OF DEPARTMENT OF FISH, WILDLIFE, AND PARKS

9/16	FISCAL NOTE NEEDED		
12/24	INTRODUCED		
1/02	FISCAL NOTE REQUESTED		
1/02	REFERRED TO FISH, WILDLIFE AND PARKS		
1/07	FISCAL NOTE RECEIVED		
1/09	FISCAL NOTE RECEIVED		
1/10	FISCAL NOTE PRINTED		
1/14	HEARING		
1/15	COMMITTEE EXECUTIVE ACTION—BILL PASSED	20	0
1/16	COMMITTEE REPORT—BILL PASSED		
1/21	2ND READING PASSED	97	3
1/22	3RD READING PASSED	99	1
	TRANSMITTED TO SENATE		
1/23	REFERRED TO FISH AND GAME		
3/13	HEARING		
3/19	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	9	0
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/22	2ND READING CONCURRED ON VOICE VOTE	45	0
3/24	3RD READING CONCURRED	47	1
	RETURNED TO HOUSE WITH AMENDMENTS		
4/07	2ND READING SENATE AMENDMENTS CONCURRED	89	6
4/08	3RD READING PASSED AS AMENDED BY SENATE	92	8
4/08	SENT TO ENROLLING		
4/09	RETURNED FROM ENROLLING		
4/10	SIGNED BY SPEAKER		
4/10	SIGNED BY PRESIDENT		
4/11	TRANSMITTED TO GOVERNOR		
4/18	SIGNED BY GOVERNOR		
4/18	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 381		
	EFFECTIVE DATE: 4/18/2003 - ALL SECTIONS		

HOUSE BILL NO. 156

INTRODUCED BY G. MATTHEWS

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE ABILITY TO PLACE A YOUTH ADJUDICATED DELINQUENT FOR AN ACT THAT WOULD BE A MISDEMEANOR IF COMMITTED BY AN ADULT IN A STATE YOUTH CORRECTIONAL FACILITY; AND AMENDING SECTIONS 41-5-1513 AND 41-5-1522, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-1513, MCA, is amended to read:

"41-5-1513. Disposition -- delinquent youth -- restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The court may not place a youth adjudicated delinquent in a state youth correctional facility for an offense act that would be a misdemeanor if committed by an adult ~~unless the court finds that the youth presents a danger to the public safety and that the placement is recommended by a mental health professional after evaluation of the youth.~~ The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b).

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register as a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative

1 placement.

2 (e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if
3 committed by an adult.

4 (2) If a youth has been adjudicated for a sex offense, the youth court may require completion of sex
5 offender treatment before a youth is discharged.

6 (3) The court may not order a local government entity to pay for care, treatment, intervention, or
7 placement. A court may order a local government entity to pay for evaluation and in-state transportation of a
8 youth.

9 (4) The court may not order a state government entity to pay for care, treatment, intervention,
10 placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without
11 approval from the cost containment review panel."

12

13 **Section 2.** Section 41-5-1522, MCA, is amended to read:

14 **"41-5-1522. Commitment to department -- restrictions on placement.** When a youth is committed
15 to the department, the department shall determine the appropriate placement and rehabilitation program for the
16 youth after considering the recommendations made under 41-5-123 by the youth placement committee.
17 Placement is subject to the following limitations:

18 (1) A youth may not be held in a state youth correctional facility for a period of time in excess of the
19 maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that
20 brought the youth under the jurisdiction of the youth court. This section does not limit the power of the
21 department to enter into a parole agreement with the youth pursuant to 52-5-126.

22 (2) A youth may not be placed in or transferred to a state adult correctional facility or other facility used
23 for the execution of sentences of adults convicted of crimes.

24 (3) The department may not place a youth in need of intervention, a youth adjudicated delinquent for
25 commission of an act that would not be ~~an offense~~ a felony if committed by an adult, or a youth who violates a
26 consent adjustment in a state youth correctional facility."

27

- END -

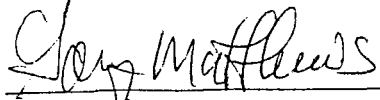
FISCAL NOTE

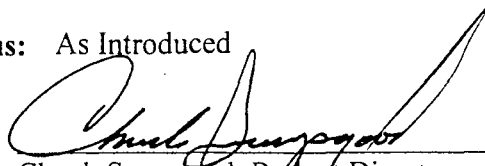
Bill #: HB0156

Title: Clarify youth court act-prohibit misdemeanor commitment to correctional facility

Primary Sponsor: Matthews, G

Status: As Introduced

 1-15-03
Sponsor signature Date

 1/14/03
Chuck Swysgood, Budget Director Date

Fiscal Summary

	<u>FY 2004 Difference</u>	<u>FY 2005 Difference</u>
Expenditures:		
General Fund	\$0	\$0
Revenue:		
General Fund	\$0	\$0
Net Impact on General Fund Balance:	\$0	\$0

- | | |
|---|--|
| ☐ Significant Local Gov. Impact | ☐ Technical Concerns |
| ☐ Included in the Executive Budget | ☐ Significant Long-Term Impacts |
| ☐ Dedicated Revenue Form Attached | ☐ Needs to be included in HB 2 |

Fiscal Analysis

ASSUMPTIONS:

Department of Corrections

1. This bill prohibits the youth court from committing a youth who has committed only misdemeanor offenses to Pine Hills or Riverside.
2. In a number of current cases the original offense would have been a felony, but is reduced to a misdemeanor during the adjudication process.
3. The Department of Corrections cannot estimate the number of cases that will now result in felony adjudication as a result of the passage of this bill.

Judicial Branch

4. Another affect of this legislation could be in the way plea bargains are handled. In order to make sure a youth could still be sent to a youth correctional facility, the court system may not allow for charges to be pleaded down to misdemeanor charges. This would not have a fiscal impact on the number of youth sent to a correctional facility because, under either current or proposed new statute, the youth would be sent to Pine Hills or Riverside Youth Correctional Facilities.
5. This legislation has no fiscal impact to the Judicial Branch.

2003 MONTANA LEGISLATURE - 58th Regular Session
INDEX TO BILLS IN COMMITTEE
- Committee: (H) Judiciary -

- HB 140** SPONSOR: Harris, Christopher SHORT TITLE: Revise third or subsequent DUI penalties
REFERRED ON: 01/02/2003 HEARD ON: 01/14/2003
HEARD ON: 02/05/2003
TABLED ON: 02/17/2003
FINAL DISPOSITION: 02/28/2003 (H) Missed Deadline for General Bill Transmittal
-
- HB 141** SPONSOR: Lange, Michael SHORT TITLE: Felony for causing high speed pursuit
REFERRED ON: 01/02/2003 HEARD ON: 01/15/2003
EXECUTIVE ACTION: 02/25/2003 -Bill Passed as Amended -- VOTE: 18 - 0
TABLED ON: 01/16/2003
FINAL DISPOSITION: 04/05/2003 (S) Returned to House with Amendments
-
- HB 149** SPONSOR: Hedges, Donald SHORT TITLE: Revise sentence review process
REFERRED ON: 01/02/2003 HEARD ON: 01/15/2003
EXECUTIVE ACTION: 01/16/2003 -Bill Passed -- VOTE: 18 - 0
FINAL DISPOSITION: 03/17/2003 Chapter Number Assigned
-
- HB 156** SPONSOR: Matthews, Gary SHORT TITLE: Clarify youth court act-revise misdemeanor commitment to correctional facility
REFERRED ON: 01/02/2003 HEARD ON: 01/15/2003
EXECUTIVE ACTION: 01/17/2003 -Bill Passed as Amended -- VOTE: 15 - 3
FINAL DISPOSITION: 03/28/2003 Chapter Number Assigned
-
- HB 161** SPONSOR: Matthews, Gary SHORT TITLE: Clarify youth's waiver of parole revocation hearing
BY REQUEST OF: Department Of Corrections
REFERRED ON: 01/02/2003 HEARD ON: 01/15/2003
EXECUTIVE ACTION: 01/15/2003 -Bill Passed -- VOTE: 18 - 0
FINAL DISPOSITION: 04/07/2003 (H) 2nd Reading Senate Amendments Concurred; Vote: 98 - 0
-
- HB 166** SPONSOR: Wanzenried, David SHORT TITLE: Clarify that guilty plea must be accepted under certain circumstances
BY REQUEST OF: Law And Justice Interim Committee
REFERRED ON: 01/03/2003 HEARD ON: 01/20/2003
EXECUTIVE ACTION: 01/23/2003 -Bill Passed -- VOTE: 17 - 1
FINAL DISPOSITION: 03/24/2003 Chapter Number Assigned
-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 15, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: Rep. Christopher Harris (D)

Members Absent: None.

Staff Present: Lisa Swanson, Committee Secretary
John MacMaster, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 141, 1/8/2003; HB 149, 1/8/2003;
HB 156, 1/8/2003; HB 161, 1/8/2003
Executive Action: HB 161; HB149; HB 95; HB 17

HEARING ON HB 161

Sponsor: REP. GARY MATHEWS, HD 4, Miles City

Opening Statement by Sponsor:

REP. MATHEWS opened on HB 161 on behalf of the Department of Corrections (DOC).

Proponents' Testimony:

Karen Duncan, Juvenile Community Corrections Bureau Chief, Butte, supported HB 161 stating this bill is basically a clean up bill. She stated its purpose is to clarify the language to ensure juveniles who violate their parole have a hearing or the option to waive it.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 29}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. OLSON closed on HB 161 hoping for a do pass.

{Tape: 1; Side: A; Approx. Time Counter: 30 - 36}

HEARING ON HB 156

Sponsor: REP. GARY MATHEWS, HD 4, Miles City

Opening Statement by Sponsor:

REP. MATHEWS opened on HB 156. He stated this bill would eliminate a court's ability to place a youth adjudicated delinquent, for an act that would be a misdemeanor if committed by an adult, in a state youth correctional facility. He emphasized that once a juvenile gets into the system, it is hard for them to get out of the system. He is opposed to putting juveniles that fit the above description in places like Pine Hills.

{Tape: 1; Side: A; Approx. Time Counter: 37 - 121}

Proponents' Testimony:

Steve Gibson, Juvenile Probation Officer Division Administrator, DOC, supported HB 156. He explained this is a state issue regarding the funds of approximately \$6 million allocated to the courts and probation. The cost for one day at Pine Hills is about \$130 a day, but due to construction costs, the present cost is about \$154. It would be more cost-effective to deal with the youths in the community. The intent is to divert any funding for more community placements. He explained that what happens sometimes is that a number of the kids could be charged with felonies and are plead down to misdemeanors. He stated that this takes away accountability and treatment. He gave examples of kids who were discharged from DOC when they needed supervision or treatment. The current law states misdemeanors should not go to a state youth correctional facility unless they are dangerous. He suggested a possible amendment to the bill for multiple misdemeanor offenders.

Jim Hunter, Supervisor, Pine Hills Youth Correctional Facility, supported HB 156. He stated that incarceration has severe impacts on the young developing brain. He strongly felt that misdemeanor type acts committed by youths involve much different conduct and they do not need to be removed from the community.

{Tape: 1; Side: A; Approx. Time Counter: 215 - 244}

Anita Roessman, Montana Advocacy Program, supports HB 156. She advocates on behalf of youths with disabilities and has worked with kids who wound up at Pine Hills or detention. She stated incarceration has a severe impact on the young developing brain. She explained there is so much pressure to put kids some placed and need to be removed from the community. She urged a solution in the future where kids can be cared for and kept in their community.

{Tape: 1; Side: A; Approx. Time Counter: 246 - 286}

Al Davis, Montana Mental Health Association, supported HB 156 stating this bill will ensure mentally ill youths will not end up incarcerated in a juvenile correctional facility. He strongly believes that the mentally ill are harder to work with but are usually involved in constant misdemeanors. He urged a do pass.

{Tape: 1; Side: A; Approx. Time Counter: 287 - 315}

Opponents' Testimony:

Richard Meeker, Chief Probation Officer, Lewis and Clark County, opposed HB 156. He explained under current law, the court may place a youth with misdemeanor convictions in a youth state correctional facility. He stated this is a rarely used, but important, tool to deal with juveniles who are designated a danger to themselves and/or the public. He stated using Medicaid money for alternative treatment but that requires a diagnosis. He urged the committee to leave this option open for courts to utilize.

{Tape: 1; Side: A; Approx. Time Counter: 316 - 393}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. PARKER opined to Ms. Koch that an adjudication is not deemed a criminal conviction under the youth court act. Since it is not a criminal conviction, isn't there a problem with a juvenile that commits an act that would be a felony if they were an adult. **Ms. Koch** stated if a youth committed a third offense of partner family member assault that they could be charged with a felony and be sent to Pine Hills as a felony offender. **REP. PARKER** stated his concern that specific language in the Domestic Violence Statute that elevates a third offense to a felony uses the term, third conviction, and there is specific language in the Youth Court Act that states adjudication is not conviction. **Ms. Koch** stated that is a valid point and that she didn't know how the Supreme Court would rule. She would be amenable to changing the language.

REP. CLARK asked **REP. MATHEWS** what program at Pine Hills would help a youth sent to Pine Hills who stole a vehicle. **REP. MATHEWS** stated the purpose of this bill is to prevent a misdemeanor youth from being sent to Pine Hills and spending time with serious juvenile offenders. He stated it is not fight for a misdemeanor youth to go to Pine Hills. **REP. CLARK** asked about options for youths who commit many misdemeanors and what to do. **REP. MATHEWS** stated there are a lot of options that could be explored besides Pine Hills such as mental health, foster homes, house arrest, project Challenge, and the program in Boulder.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 46}

REP. CLARK stated to Mr. Meeker that he has intimate knowledge, through his wilderness program, of working with misdemeanor youths. He asked what value Pine Hills would have on youths like

this. **Mr. Meeker** responded three to four placements at Pine Hills a year and those are serious juvenile offenders. He stated that most children are kept in the community with electronic monitoring, house arrest and the Great Falls Detention Center. He emphasized that by the time a youth goes to Pine Hills, probation has worked with them for six months or so. **Mr. Meeker** stated there are drawbacks to Pine Hills but is necessary in some instances. **REP. CLARK** stated his dissatisfaction of a system that says it tried and failed and therefore sends a youth with misdemeanors to Pine Hills.

{Tape: 1; Side: A; Approx. Time Counter: 47 - 120}

REP. CLARK asked Steve Gibson about the extremely troubled child who never crosses the line to a felony, but who is at risk. He asked about options other than Pine Hills. **Mr. Gibson** stated it is kind of a catch 22 and explained the recidivism rate at Pine Hills for felonies is 5.9 to 11 percent. He stated that once they are in the system, no matter what, it is difficult for them to get out. He gave an example of a 12 year old at Pine Hills, whether they are doing well or not, they will be at Pine Hills until they are 18. There are programs that access parts of Medicaid, but the issue is whether to pay for a kid to go to Pine Hills or to remain in the community. He explained it costs less to keep a youth in the community.

{Tape: 1; Side: A; Approx. Time Counter: 121 - 211}

REP. GUTSCHE asked Mr. Gibson about Medicaid dollars and how to access the money. **Mr. Gibson** responded there are many ways to access Medicaid money. He stated Chuck Hunter, Department of Public Health and Human Services (DPHHS) has studied how the state can access more Medicaid dollars. **REP. GUTSCHE** stated Missoula has many settings for kids to go which keeps them out of Pine Hills and questioned which other communities have similar programs to Missoula. **Mr. Gibson** responded that Missoula has the best and the most programs but Butte, Helena, Great Falls, and Billings all have alternative settings to Pine Hills.

{Tape: 1; Side: A; Approx. Time Counter: 212 - 284}

REP. NOENNIG asked Mr. Gibson about other states and their standards. **Mr. Gibson** stated some states do not send misdemeanors, other states do such as Illinois, California do not allow misdemeanors; Alaska and Arizona are looking at a similar bill of diverting money from their facility to deal with keeping kids in the community. **REP. NOENNIG** asked whether the present system is really failing in terms of youths being sent there. **Mr. Gibson** replied that Montana is a Sunday school and the system is

kind of working especially with the money Montana has to work with. **Mr. Gibson** posed the issue is whether it is beneficial to the community to have misdemeanors in alternative settings. He stated that Probation follows existing statute and does what they are supposed to do. He believed HB 156 is perplexing as it could be argued from a care taker position to an accountability and public safety issue. **REP. NOENNIG** posed that maybe the mental health professional part of this bill is the problem. **Mr. Gibson** responded that some of the problem does lie there and that definition needs to be addressed. **REP. FACEY** asked whether this issue affects rural districts more as they do not have the vast array of services. **Mr. Gibson** responded that rural areas have smaller budgets and fewer alternatives and is a factor.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 7}

REP. RICE stated her concern over the broad definition of mentally ill and the large number of youths who are diagnosed as such. She asked whether how many youths are medicated. **Mr. Gibson** responded that there are three diagnosis: schizophrenia, bipolar, and major depression. He cited 40-50 percent of youths at Pine Hills as being medicated. **REP. RICE** asked whether youths who are released are able to access their medication. **Mr. Gibson** responded that is a major problem if a youth needs to be on medication and cannot access it. **REP. RICE** asked whether youths are being over diagnosed. **Mr. Gibson** responded that can happen and has in the past. Pine Hills and Riverside do provide some mental health to youths if not severe.

{Tape: 2; Side: A; Approx. Time Counter: 8 - 71}

REP. LASZLOFFY asked whether Pine Hills and Riverside are the only two state correctional facilities for youths. **Mr. Gibsons** stated that is correct affirming that Pine Hills, for boys, houses 140, and Riverside, for girls, houses 120. **REP. LASZLOFFY** asked what percentage of the total placements each year would be affected by this bill. **Mr. Gibson** stated approximately about 10-12 a year for both institutions. He hoped to come to an amendment to deal with the multiple serious and the mental health issues.

REP. GALLUS stated he works on a screening committee for a group home and that they look for many criteria. He stated they cannot place a child into a group home that would disrupt the therapy of the other kids or pose a threat to other kids or staff. **REP. LASZLOFFY** asked **Mr. Gibson** about this bill limiting options; that if this bill passes, it takes an option for the courts to use when a child is dangerous cannot be dealt with in the community.

REP. GALLUS added that facilities such as Aspen, and Youth Dynamics do exist and would get behind this creating more options to keep the kids in the community.

{Tape: 2; Side: A; Approx. Time Counter: 82 - 190}

Closing by Sponsor:

REP. MATHEWS closed on HB 156 emphasizing that if a juvenile commits a felony, they may be charged with a felony and could be sent to Pine Hills. He commented that misdemeanor kids do not qualify for the chemical dependency or the sex offender programs because the programs are only for felons. He explained that if a juvenile commits a felony, such as sexual intercourse without consent, and they plead it down to sexual assault, they could be placed in the general population at Pine Hills. He stated it now becomes problematic as you have placed a serious sexual offender with misdemeanor kids. The serious offender cannot receive rehabilitation as they are technically not a felon, thus the sex offender program would not be available to this youth. He agreed with many committee members concerns about multiple, highly delinquent, misdemeanors. He emphasized this can be addressed and urged a do pass.

{Tape: 2; Side: A; Approx. Time Counter: 191 - 236}

HEARING ON HB 149

Sponsor: **REP. DONALD HEDGES, HD 97, Antelope**

Opening Statement by Sponsor:

REP. HEDGES opened on HB 149 stating that this is a clean up bill to provide the courts some discretion on where to hold the parole hearings. He stated the hearings are now held at Deer Lodge and this bill would allow a parole hearing in other destinations.

{Tape: 2; Side: A; Approx. Time Counter: 237 - 270}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. LANGE closed on HB 141. He stated he would address concerns on the fiscal note. He emphasized the fiscal note sets forth the elements of the crimes and the fines. This bill sends a clear message to the people back home that they care about their safety.

{Tape: 2; Side: B; Approx. Time Counter: 238 - 272}

EXECUTIVE ACTION ON HB 161

Motion/Vote: REP. GALLUS moved that HB 161 DO PASS. Motion carried unanimously 18-0 voice vote .

{Tape: 2; Side: B; Approx. Time Counter: 278 - 289}

EXECUTIVE ACTION ON HB 149

Motion: REP. NEWMAN moved that HB 149 DO PASS.

Discussion:

REP. NEWMAN commented this is not a pork barrel piece of legislation and would greatly assist all interested parties.

Vote: Motion carried unanimously 18-0 voice vote.

{Tape: 2; Side: B; Approx. Time Counter: 290 - 315}

EXECUTIVE ACTION ON HB 156

Motion: REP. RICE moved HB 156.

Discussion:

The committee discussed putting youths who commit misdemeanors in youth correctional facilities. REP. NEWMAN explained many misdemeanors never become felonies. He stated if youths are dangerous, prosecutors need to charge them up front. He believes HB 156 sends a strong message to the prosecution and to juvenile authorities to stop hedging their bets. REP. NOENNIG stated he had some problems with the bill and will oppose it. REP GALLUS stated removing the mental health professional will destroy the intent of the bill. REP. CLARK stated he has some ambivalence of the bill due to the gap of th either/or with the kids. He believes there are some creative alternatives and the kids should be, and could be, reached before they have 30 misdemeanors. He

also stressed his concern on not moving this bill forward regards the double standard in our society concerning adults who drive drunk. He stressed that kids with a pack of misdemeanors are much less dangerous than adults driving drunk. He stated he will support the bill.

{Tape: 3; Side: A; Approx. Time Counter: 6 - 157}

REP. THOMAS asked about plea bargaining. REP. NEWMAN responded there is a real misconception regarding plea bargains. He stated that Judge Olson once commented that a plea bargain is not much of a bargain as a defendant gives up his right to a trial by jury, the right to present evidence, the right to cross examine witnesses, and basically they give up their right to a defense.

{Tape: 3; Side: A; Approx. Time Counter: 160 - 222}

REP. FACEY stated he teaches seventh grade science in Missoula. He agreed there is a gap in services. He stated Missoula Youth Homes, is an exception, and they run a tight ship where the kids have to be accountable and it is working.

{Tape: 3; Side: A; Approx. Time Counter: 223 - 267}

REP. NEWMAN stated his wish to postpone the hearing on this bill due to some problems which he believed could be fixed with some amendments and further discussions.

{Tape: 3; Side: A; Approx. Time Counter: 268 - 297}

Motion/Vote: REP. NEWMAN moved that HB 156 BE INDEFINITELY POSTPONED. Motion carried unanimously 18-0 voice vote.

{Tape: 3; Side: A; Approx. Time Counter: 299 - 303}

EXECUTIVE ACTION ON HB 77

Motion: REP. GUTSCHE moved that HB 77 DO PASS.

Discussion:

REP. NOENNIG asked about some amendments Chairman Shockley suggested. John McMaster stated they are not in written form. REP. CLARK stated the hearing should be postponed until they are in written form.

{Tape: 3; Side: A; Approx. Time Counter: 304 - 337}

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 1/15/03

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY	✓		
REP. PAUL CLARK, VICE CHAIR MINORITY	✓		
REP. SCOTT SALES	✓		
REP. MIKE LANGE	✓		
REP. DIANE RICE	✓		
REP. CHRISTOPHER HARRIS			✓
REP. TOM FACEY	✓		
REP. STEVE GALLUS	✓		
REP. JOHN PARKER	✓		
REP. HOLLY RASER	✓		
REP. MARK NOENNIG	✓		
REP. BRUCE MALCOLM	✓		
REP. BILL THOMAS	✓		
REP. RON STOKER	✓		
REP. GAIL GUTSCHE	✓		
REP. GEORGE EVERETT	✓		
REP. BRAD NEWMAN	✓		
REP. JIM SHOCKLEY, CHAIRMAN	✓		

**Montana House of Representatives
Visitors Register**

JUDICIARY COMMITTEE

Date 1/15/03

Bill No. HB156 Sponsor(s) Mathews

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Jim Hunter	DOC	X		
Steve Gibson	DOC	X		
ANITA ROESSMAN	MAP	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 17, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)

Members Excused: Rep. Bill Thomas (R)
Rep. Christopher Harris (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: 208, 1/8/2003; 209, 1/8/2003; 210,
1/8/2003; 211, 1/8/03; 212, 1/8/03
Executive Action: HB 52; HB 208; HB 54; HB 156

EXECUTIVE ACTION ON HB 52

Motion: REP. LASZLOFFY moved that HB 52 DO PASS.

Discussion:

REP. NEWMAN stated that based on statistics, he believes these crimes are happening. He stated that to let other bills take care of this issue would be bad public policy. REP. RASER commented that a just society may be measured by how it treats its most vulnerable. REP. SHOCKLEY asked about the cross burning case before the U.S. Supreme Court.

Vote: Motion failed 9-9 roll call vote with CLARK, HARRIS, FACEY, GALLUS, PARKER, RASER, NOENNIG, GUTSCHE, AND NEWMAN voting aye.

{Tape: 2; Side: A; Approx. Time Counter: 139 - 158}

Motion/Vote: REP. LASZLOFFY moved that HB 52 BE TABLED. Motion carried 9-7 with CLARK, FACEY, GALLUS, GUTSCHE, NEWMAN, PARKER, and RASER voting no.

EXECUTIVE ACTION ON HB 156

Motion: REP. RASER moved that HB 156 DO PASS.

Discussion:

The Committee discussed HB 156. REP. CLARK emphasized the inconsistency of declaring a youth dangerous who commits a misdemeanor when adults who drink and drive are much more dangerous. REP. NEWMAN commented that he liked the bill as is. REP. LASZLOFFY moved to postpone the bill to give time for amendments.

Motion/Vote: REP. LASZLOFFY moved that HB 156 BE INDEFINITELY POSTPONED. Motion carried unanimously 14-0 voice vote.

EXECUTIVE ACTION ON HB 208

Motion REP. LANGE moved that HB 208 DO PASS.

Discussion:

Committee discussed what a reasonable time would be.

Vote: Motion carried unanimously 14-0 voice vote.

EXECUTIVE ACTION ON HB 54

Motion: REP. NEWMAN moved that HB 54 DO PASS.

Discussion:

REP. NEWMAN stated that this bill was heard a couple days ago and that it would add electronic communications to four existing crimes in the code. He emphasized it would not change or expand the existing crimes.

Motion/Vote: REP. NOENNIG moved that HB 54 BE AMENDED. (NOENNIG Amendment.) Motion to amend failed 7-10 roll call vote with REPS. CLARK, SALES, LANGE, FACEY, HARRIS, NOENNIG, AND NEWMAN voting yes.

Motion: REP. NEWMAN moved that HB 54 BE FURTHER AMENDED. (NEWMAN AMENDMENT)

Discussion:

The Committee discussed amending the language in HB 54. John McMaster discussed and proposed the amending language. REP. NEWMAN suggested that page 6, line 6 be amended.

Vote: Motion to Amend (Newman amendment) carried unanimously 14-0 voice vote.

Motion/Vote: REP. NOENNIG moved that HB 54 DO PASS AS AMENDED. Motion carried unanimously 14-0 voice vote.

{Tape: 2; Side: B; Approx. Time Counter: 158 - 343}

EXECUTIVE ACTION ON HB 156

Motion: REP. RASER moved that HB 156 DO PASS.

Motion: REP. RASER moved that HB 156 be amended.

Discussion:

REP. RICE stated that the amendments to HB 156 totally negates the bill. REP. NOENNIG commented that the amendment was brought to define multiple misdemeanors but that he does not like the amendments. REP. NEWMAN stated that he liked the bill without the amendment; that the amendment does not negate the bill but does change it.

Vote: Motion that HB 156 BE AMENDED carried 11-6 roll call vote with GALLUS, GUTSCHE, NEWMAN, PARKER, RASER, and SALES voting no.

Motion/Vote: REP. GALLUS moved that HB 156 DO PASS AS AMENDED. Motion carried 15-3 voice vote with NOENNIG, PARKER, and SALES voting no.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 124}



HOUSE STANDING COMMITTEE REPORT

January 17, 2003

Page 1 of 2

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 156** (first reading copy -- white) do pass as amended.

Signed: _____

Representative Jim Shockley, Chair

And, that such amendments read:

1. Title, page 1, line 4.

Strike: "ELIMINATING"

Insert: "REVISING"

2. Title, page 1, line 6.

Strike: "SECTIONS"

Insert: "SECTION"

Strike: "AND 41-5-1522"

3. Page 1, line 16 through line 19.

Strike: "The court" on line 16 through "." on line 19

4. Page 1, line 20.

Following: "(1)(b)."

Insert: "The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four misdemeanors in the prior 12 months;

(ii) none of the four prior misdemeanors was committed within 24 hours of any of the other three;

(iii) a psychiatrist, psychologist, professional counselor, or social worker licensed by the state has evaluated the youth and recommends placement in a state youth correctional

Committee Vote:

Yes 15, No 3.

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7:55
22

facility; and

(iv) the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

5. Page 2, line 13 through line 26.

Strike: section 2 in its entirety

- END -

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 1/17/03

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY	✓		
REP. PAUL CLARK, VICE CHAIR MINORITY	✓		
REP. SCOTT SALES	✓		
REP. MIKE LANGE	✓		
REP. DIANE RICE	✓		
REP. CHRISTOPHER HARRIS			✓
REP. TOM FACEY	✓		
REP. STEVE GALLUS	✓		
REP. JOHN PARKER	✓		
REP. HOLLY RASER	✓		
REP. MARK NOENNIG	✓		
REP. BRUCE MALCOLM	✓		
REP. BILL THOMAS	✓		✓
REP. RON STOKER	✓		
REP. GAIL GUTSCHE	✓		
REP. GEORGE EVERETT	✓		
REP. BRAD NEWMAN	✓		
REP. JIM SHOCKLEY, CHAIRMAN	✓		

- HB 141** SPONSOR: Lange, Michael SHORT TITLE: Felony for causing high speed pursuit
REFERRED ON: 03/07/2003 HEARD ON: 03/21/2003
EXECUTIVE ACTION: 04/01/2003 -Bill Concurred as Amended -- VOTE: 9 - 0
INDEFINITELY POSTPONED: 03/25/2003
FINAL DISPOSITION: 04/09/2003 (H) Sent to Enrolling
-
- HB 149** SPONSOR: Hedges, Donald SHORT TITLE: Revise sentence review process
REFERRED ON: 01/23/2003 HEARD ON: 01/29/2003
EXECUTIVE ACTION: 01/31/2003 -Bill Concurred as Amended -- VOTE: 9 - 0
FINAL DISPOSITION: 03/17/2003 Chapter Number Assigned
-
- HB 155** SPONSOR: Jent, Larry SHORT TITLE: Revise voting system technologies and vote counting process
BY REQUEST OF: State Administration And Veterans' Affairs Interim Committee
REFERRED ON: 02/04/2003 HEARD ON: 03/05/2003
HEARD ON: 03/11/2003
EXECUTIVE ACTION: 03/25/2003 -Bill Concurred as Amended -- VOTE: 8 - 0
FINAL DISPOSITION: 04/08/2003 (H) Sent to Enrolling
-
- HB 156** SPONSOR: Matthews, Gary SHORT TITLE: Clarify youth court act-revise misdemeanor commitment to correctional facility
REFERRED ON: 01/31/2003 HEARD ON: 03/06/2003
EXECUTIVE ACTION: 03/10/2003 -Bill Concurred as Amended -- VOTE: 9 - 0
FINAL DISPOSITION: 03/28/2003 Chapter Number Assigned
-
- HB 161** SPONSOR: Matthews, Gary SHORT TITLE: Clarify youth's waiver of parole revocation hearing
BY REQUEST OF: Department Of Corrections
REFERRED ON: 01/23/2003 HEARD ON: 03/06/2003
EXECUTIVE ACTION: 03/11/2003 -Bill Concurred as Amended -- VOTE: 9 - 0
FINAL DISPOSITION: 04/11/2003 (H) Transmitted to Governor
-
- HB 166** SPONSOR: Wanzenried, David SHORT TITLE: Clarify that guilty plea must be accepted under certain circumstances
BY REQUEST OF: Law And Justice Interim Committee
REFERRED ON: 02/03/2003 HEARD ON: 03/06/2003
EXECUTIVE ACTION: 03/11/2003 -Bill Concurred -- VOTE: 8 - 1
FINAL DISPOSITION: 03/24/2003 Chapter Number Assigned
-

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 6, 2003 at
9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 166, HB 170, HB 161, HB 156,
2/21/2003

Executive Action: HB 161, HJ 1, HB 14, HB 18, HB 54,
HB 77, HB 234,

Questions from Committee Members and Responses:

SEN. CROMLEY asked whether the youth would typically be represented by an attorney. **REP. MATTHEWS** explained this would involve youth that have been released from a correctional facility and are on parole. Their parole agreement would have been violated. The parole officer would like to have another placement for the youth. The youth has the ability to have an attorney for the violation of the parole agreement. Normally, when parole has been violated, another crime has been committed.

SEN. MIKE WHEAT remarked that page two does not include the advice of counsel. **REP. MATTHEWS** claimed that when a youth admits that his parole agreement has been violated, the hearing would be waived.

Closing by Sponsor:

REP. MATTHEWS closed by stating the bill would simply clear up a contradiction in the law.

HEARING ON HB 156

Sponsor: **REP. GARY MATTHEWS, HD 4, MILES CITY**

Proponents: **Dick Meeker, Montana Juvenile Probation Officers Association**

Opponents: **None**

Opening Statement by Sponsor:

REP. GARY MATTHEWS, HD 4, MILES CITY, introduced HB 156. He remarked that he had amendments he wanted the Committee to consider that dealt with the professionals involved. The original intent of the bill was to eliminate juveniles convicted of a misdemeanor from being placed in a state youth correctional facility. This would include the Pine Hills Youth Correctional Facility and the Riverside Girls School. These facilities are for serious juvenile offenders. Under statute, a serious juvenile offender is defined as a youth who has committed a crime that would be considered a felony if the youth were an adult. This would be a crime against property or persons or would involve the use of drugs. The House amendment eliminated the concerns of the probation officers. On page 1, line 26, he would like an amendment to add a licensed clinical professional counselor or a licensed clinical social worker.

REP. MATTHEWS stated he has worked at the Pine Hills Youth Correctional Facility for five years. As a matter of public policy, he believed placing misdemeanor juveniles with felony offenders was the wrong thing to do. Approximately ten to twelve misdemeanor youth are sent to Pine Hills annually. Once a youth is in the system, it is very difficult for the youth to leave the system.

Proponents' Testimony:

Dick Meeker, Montana Juvenile Probation Officers Association, presented his written testimony, **EXHIBIT(2)**.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL asked what misdemeanors could be committed that would not show the youth was a danger to the public. **Mr. Meeker** noted approximately 7.5 percent of the youth committed to Pine Hills on an annual basis are misdemeanor offenders. This would include multiple shoplifting offenses.

SEN. WHEAT noted a previous bill dealt with allowing the judge discretion to send youths with mental problems to some facility other than a state facility so that Medicare payments would be available. **REP. MATTHEWS** explained that juvenile placement committees consist of the probation officer, the judge, and the school. The problem is inappropriate sentences. Juvenile placement dollars are available for shoplifters. The Pine Hills Correctional Facility is for serious juvenile offenders. The population includes gang members and drug users. County attorneys like to plea bargain. If a juvenile committed a crime of sexual intercourse without consent and this was plea bargained to six months, this misdemeanor youth would not be able to be placed in the sex offender program at Pine Hills. The youth become better criminals by being placed with serious offenders.

SEN. WHEAT questioned whether the state needed a correctional facility between home-based care and the Pine Hills Correctional Facility. **REP. MATTHEWS** noted juvenile placement dollars are available for this population.

SEN. O'NEIL asked why the juvenile placement committee were not responsible to make the determination regarding whether or not the youth should be placed in a state correctional facility. **REP. MATTHEWS** explained the licensed, mental health professionals had the ultimate decision in regard to placement for youth at Pine Hills or Riverside. Under this bill, the probation officers

and the district court judge would be able to send a misdemeanor youth to a state correctional facility, but consideration would need to be given to the mental health professionals.

CHAIRMAN DUANE GRIMES questioned whether line 27 on page 1 should use the word "or" instead of "and".

{Tape: 2; Side: A}

REP. MATTHEWS preferred using the word "and" instead of "or". His goal is to reduce the number of misdemeanor youths at the Pine Hills facility. The amendment to further define a licensed social worker is very important. There is a huge difference between youth from rural areas and youth from urban areas.

SEN. CROMLEY remarked it was his understanding that the intent of the legislation is to provide for fewer youths being sent to the state correctional facility. **REP. MATTHEWS** hoped this would be the result. Currently ten to twelve youth are sent to the facility on an annual basis. The legislation will further define a multiple misdemeanor youth who is highly delinquent. The number of placements for serious juvenile offenders should be decreased.

SEN. CROMLEY asked for further clarification of the conditions set out at the bottom of page one of the bill. **REP. MATTHEWS** clarified that currently a misdemeanor youth may be sent to Pine Hills Correctional Facility by the juvenile placement committee. The legislation will provide better guidelines and policy in regard to keeping serious juvenile offenders away from misdemeanor youth. The language at the bottom of page one further defines a highly misdemeanor youth.

SEN. CROMLEY raised a concern that there could be a court finding that the misdemeanor youth could in fact could present a danger to the public if he or she is not placed in a youth correctional facility. Under this legislation, the court would be powerless to make that placement.

REP. MATTHEWS reiterated his concern was inappropriate placement of youth to the Pine Hills facility. The probation officers opposed this bill in the House Judiciary Committee. They were concerned about taking away their authority. The bill has been amended to provide a guideline within which they can accomplish their work. The amendments do not take anything away from the court but instead they define a highly delinquent misdemeanor youth.

Closing by Sponsor:

REP. MATTHEWS stated he works as a teacher's aide in the Pine Hills facility. It is a place for serious juvenile offenders. This bill addresses youth that are sent to the facility for misdemeanors. The population at Pine Hills have usually been involved in a high number of crimes. This includes sex offenders, gang members, white power, brown power, huffers, etc. These youth have committed many felonies.

EXECUTIVE ACTION ON HB 161**Discussion:**

SEN. WHEAT asked **Steve Gibson, Department of Corrections**, for further clarification of the bill. He noted the language on page 1 stated that the youth, upon advice of an attorney, could waive the right to a hearing. The language on page 2 states that the youth signs a waiver of the hearing that acknowledges that the youth has violated the terms of the youth's parole agreement. He questioned whether at the same time the youth waived his or her right to a hearing the youth would also be admitting that the terms of the parole agreement were violated. **Mr. Gibson** affirmed. If the youth, with advice of an attorney, waives a right to a hearing, he or she is admitting the revocation violations. Even if a hearing is held and the hearings officer determines the placement is not appropriate, the youth would still go to the facility and then would appeal to the Director of the Department of Corrections.

SEN. WHEAT suggested the language be added to state when a youth waives the right to a hearing, the youth acknowledges that he or she has violated the terms of their parole agreement.

Ms. Lane raised a concern in regard to placing the language on page 1. She believed the youth could not waive the hearing unless they also admitted the violation. She further noted on page 2 (6) allows the hearings officer to make a decision for the placement of the youth if the youth waived the hearing and acknowledged the violation. This begs the question to the situation when a youth would waive a hearing but did not acknowledge commission of a violation.

SEN. WHEAT noted that two things are set out on page two: 1) The youth is waiving a substantive right to a hearing. 2) The youth is acknowledging guilt of violation of the terms of his or her agreement. **Mr. Gibson** clarified this is similar to an adult revocation. It is not a probation situation but a parole situation. In the waiver process, the youth is admitting, under

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 3-6-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

Dick Meeker
Montana Juvenile Probation Officers Association
HB156
March 6, 2003
Senate Judiciary Committee

Mr. Chairman and members of the committee, my name is Dick Meeker and I am representing the Montana Juvenile Probation Officers Association. The Association supports this legislation as amended by the House. The Association originally opposed this legislation because it left the youth court with no discretion in dealing with multiple misdemeanor offenders. We commend the sponsor for his changes and support the legislation as it is currently written.

The Youth Courts go to great lengths to keep juveniles from ever reaching a correctional facility but there are times when it is necessary because the community needs to be protected and the youth has not responded to other options.

It is very unusual for a youth with misdemeanor convictions to be placed at a correctional facility. Despite the rarity of this, it is an important tool for youth courts and judges. This bill, as amended, allows the courts to deal with repeat offenders, who have failed to respond to other youth court actions. In cases like this, the best way to deal with the juvenile - both for protection of the community and rehabilitation of the youth - might be a term at a correctional facility.

The youth court system is designed to hold the youth accountable, establish appropriate behavior and protect the public. This bill, as amended, still provides the youth courts and judges with the necessary tools to hold youth accountable and protect communities.

Again, we support this bill as currently written.

SENATE JUDICIARY

Exhibit No. 2
Date 3-6-03
Bill No. HB 156

DATE March 6-2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 156 - HB 161 - HB 166.

HB 170

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
John Connor	444-2006	DOJ / AG	166 170	X X	
Richard Meeker	447-8228	Juv. Prob. officers Assoc	156	X	
LEO GALLAGHER	447-8221	L & C County Att MICA	166 170	X X	
Al Raw	443-5647	Mental Health Assn	166 166		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 10, 2003 at
10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 210, HB 212, HB 214, 2/25/2003
Executive Action: HB 156, HB 210, HB 161

this would be an accident and there would be a question of parental liability.

SEN. MCGEE asked how the policy or current court practices would change if this bill did not pass. **REP. SHOCKLEY** explained the bill is simply the Restatement and this is what the court used. If the bill was not passed, nothing would change but it would be more difficult to find the law addressing this issue. If **Mr. Van Horssen's** suggested amendment was adopted, there would be a change in the law.

CHAIRMAN GRIMES asked whether, under the bill, the parents would be liable civilly or criminally? **REP. SHOCKLEY** maintained the bill would only relate to civil liability.

Closing by Sponsor:

REP. SHOCKLEY pointed out that adopting the new section as currently drafted would have several advantages. The first is that it is settled law in other jurisdictions. If **Mr. Van Horssen's** amendment is adopted, this will be new territory. He believed the bill would then lead to more litigation. The only complaint Justice Rice had in his concurring opinion was that he believed the word "supervised" was a more modern and reasonable way to describe the relationship between child and parent. He believed the amendment would actually broaden the liability of the parent for the acts of the child because of the provision "knows that the child has previously demonstrated a particular dangerous propensity that presents an unreasonable risk of harm to others." If the amendment is passed and a child had a record of driving while intoxicated and the father did not see the child get into the car while the child was drinking, but had allowed the child to use the car, the parent would be responsible. The parent knew the child had a propensity to drink and drive. If the child was sober when he or she left home and then become intoxicated and caused an accident, the parent would be on the hook. He suggested the Committee adopt the Restatement of Torts as it exists in most of the states.

In regard to HB 210, **REP. SHOCKLEY** suggested on line 28, page 1, he would strike the words "denial of the motion" and insert "entry of the plea".

{Tape: 2; Side: B}

EXECUTIVE ACTION ON HB 156

Motion: **SEN. MANGAN** moved that **HB 256 BE CONCURRED IN.**

Substitute Motion: SEN. MANGAN moved that HB 156 BE AMENDED, HB 015601.av1, EXHIBIT(2).

Discussion:

Ms. Lane explained REP. MATTHEWS asked for the amendments. On line 26, he wanted to make it clear that the language included a licensed clinical professional counselor or a licensed clinical social worker. There are three levels of social workers and he wanted this limited to those who are called licensed clinical social workers. This would read: "A psychiatrist or psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker."

Vote: The motion carried unanimously.

Motion: SEN. MANGAN moved that HB 156 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. O'NEIL stated that a youth who had committed four misdemeanors in the prior 12 months, would present a danger to the public.

CHAIRMAN GRIMES pointed out that four shoplifting misdemeanors would not be a danger to the public. He further questioned the word "and" on line 27. If a youth committed four misdemeanors, it may be necessary to have the youth sent to Pine Hills. Ms. Lane maintained the word "and" was conjunctive while the word "or" would be disjunctive. If the word was changed to "and", the section would be made broader and this would change the intent of the bill.

SEN. WHEAT recalled a youth who represents a serious danger to the public will probably be one who is charged with a felony. He added that the sponsor, who works at Pine Hills, made it clear to the Committee the intent of the bill was to keep the youth out of Pine Hills who commit numerous petty crimes that amount to misdemeanors but they do not belong with the population at Pine Hills. That population includes youth who have committed serious crimes and do constitute a very real danger to society.

SEN. MCGEE questioned whether a fifth misdemeanor in a 12 month period could result in the youth being sent to Pine Hills. SEN. WHEAT believed this could take place with the fourth misdemeanor.

SEN. MCGEE noted that, as a policy of the state, there are youth who offend routinely and regularly and it is necessary the state have a hammer to address this situation.

Ms. Lane pointed out the language should state four or more misdemeanors to be technically correct.

Substitute Motion: **SEN. O'NEIL** moved that **HB 156 BE AMENDED**.

Discussion:

SEN. O'NEIL explained on line 27, he would strike the word "recommends" and insert the words "has not precluded".

CHAIRMAN GRIMES maintained there may be times where the judge would want to commit the youth because of the nature of the misdemeanors or other circumstances but a psychiatrist would be reluctant to recommend placement. In the hearing, **REP. MATTHEWS** clarified they are used to proceeding in this manner.

SEN. MANGAN pointed out the current youth placement committee process includes that a mental health professional serve on the committee. Currently, it is necessary for the mental health professional to sign off in regard to placement. Safeguards are in place.

SEN. BRENT CROMLEY understood the current law provides a youth cannot be placed in the state facility unless recommended by a mental health professional and the court makes a determination that the youth is a danger to public safety. Apparently there are 10 to 12 youth who fall under this criteria committed to Pine Hills on an annual basis. The concern is that some of these youth should not be going to Pine Hills. This appeared to be an arbitrary way to cut back on the number of youths being placed in the state facility. Maybe they should not be going there at all.

Vote: The motion failed with **O'NEIL** and **CROMLEY** voting aye.

Ms. Lane recommended the language on line 24 state "or more" after "misdemeanors". She is assuming the language was meant to state at least four misdemeanors. The word "four" on line 25 should be changed. She recommended combining (i) and (ii). This would read: "The youth committed four or more misdemeanors in the prior 12 months and none of the prior misdemeanors was committed within 24 hours of any of the others;".

Motion: **CHAIRMAN GRIMES** moved that **HB 156 BE AMENDED** to address the recommendation of **Ms. Lane**.

Discussion:

SEN. CROMLEY had a problem with the change. It would read that the person may have eight, twelve, or more misdemeanors but as long as two of them were within 24 hours, the youth would no longer come under the section and could not be committed.

CHAIRMAN GRIMES withdrew the motion.

CHAIRMAN GRIMES recommended adding the words "or more" after the word "misdemeanors" on line 24. The word "four" would be stricken on line 25. **Ms. Lane** believed the intent of (ii) on line 25 is that any misdemeanors that occur on one rampage should be counted as one misdemeanor and not as separate misdemeanors.

Motion: **SEN. CROMLEY** moved that **HB 156 BE AMENDED**.

Discussion:

SEN. CROMLEY recommended striking (ii). He did not believe there should be a reason to avoid the commitment if two of the misdemeanors were within 24 hours. The recommendation of a professional would still be required and there would need to be a determination that the youth be a danger to the public.

Ms. Lane questioned whether the same concept could be conveyed on line 24 with use of the word "separate" or "unconnected".

SEN. MCGEE would not like to see 37 misdemeanors perpetrated by one individual in a 24-hour period to be considered as one misdemeanor. A youth with a case of spray paint could damage all the parked cars along various streets. He believed this should involve individual offenses.

SEN. PERRY agreed that (i) and (ii) appear to be arbitrary. There is no precedence to state the youth committed four misdemeanors in the prior 12 months. The words "four months" and "twelve months" are arbitrary. He suggested addressing line 28 which stated: "The youth will present a danger to the public." Line 26 has been qualified to state a psychiatrist, psychologist, etc., will make the recommendation. He wondered whether a more serious charge could have been plea bargained to a misdemeanor. If the psychiatrist or psychologist determined that with one incident this person would constitute a danger to the public, lines 24 and 25 were problematic for him.

SEN. MANGAN pointed out the original bill would have eliminated misdemeanor youth being placed at Pine Hills. The House Judiciary Committee plea bargained this down to the language on

lines 21-29. The Committee worked with the Department of Corrections, The Juvenile Probation Officers Association, and others. The juvenile probation officers still wanted the ability to place the youth in Pine Hills or Riverside if the youth only had misdemeanors. The parties worked on this bill extensively. He opposed the amendment on behalf of the sponsor. If a youth has committed a felony, he or she needs to be charged with a felony and not plea bargain in hopes that everything will be okay. Youth do not want to stay in Pine Hills for any length of time. It is a hard core juvenile prison.

CHAIRMAN GRIMES did not believe the bill would be weakened by striking line 24 and 25. There would be concern that counselors may recommend more youth be placed in Pine Hills but the youth would still need to present a danger to the public.

SEN. MANGAN reiterated that the original intent of the bill was that one misdemeanor youth being sent to Pine Hills was too many. The current bill has criteria to lessen those numbers. If a youth is truly committing a felony, he or she needs to be charged with a felony. A youth could easily pick up three or four misdemeanors by shoplifting from Target, not giving a correct name, etc.

SEN. PERRY contended the language would be less restrictive by removing lines 24 and 25. If the four conditions exist the youth would be placed in Pine Hills. If there are 37 misdemeanors but no danger to the public, why would the youth be committed to Pine Hills. The key item is whether or not the youth will present a danger to the public.

SEN. WHEAT explained line 28 is existing law which is found between lines 17 and 20 as well as lines 26 and 27. The bill attempts to define the misdemeanor category so that there will not be as many youth committed to Pine Hills unless all the other elements are present. The intent is to weed out those who should not be placed with the dangerous population at Pine Hills.

SEN. O'NEIL believed the language on line 25 stated if a youth committed two misdemeanors within 24 hours of each, no matter how many other misdemeanors he commits, he cannot be sent to Pine Hills.

SEN. CROMLEY explained the amendment would strike line 25. Also, line 24 would read: "(i) the youth committed four or more unrelated misdemeanors in the prior 12 months;".

Vote: Motion carried with **MANGAN** voting no.

Motion: SEN. MANGAN moved that HB 156 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. MCGEE noted a youth could commit four or more unrelated misdemeanors. If the youth had an entire backseat of ice balls and proceeded to throw them through various windows, because the misdemeanors are related, he would be precluded from going to Pine Hills.

SEN. CROMLEY agreed that could be a possible defense.

Substitute Motion: SEN. MCGEE moved that HB 156 BE AMENDED.

Discussion:

SEN. MCGEE would amend line 24 by striking the word "unrelated". The language would state the youth committed four or more misdemeanors in the prior 12 months.

SEN. MANGAN raised a concern that the word "unrelated" could also be assumed to refer to four different misdemeanors as well. Ms. Lane agreed and noted that a better word could be found to incorporate the concept.

Vote: The motion carried unanimously.

SEN. O'NEIL questioned whether anyone who could recommend the youth be placed at Pine Hills, was being eliminated in the language of the bill.

SEN. MANGAN noted the standard practice has been the four professionals who are listed specifically in the House amendments.

SEN. PERRY suggested an amendment. Line 28 states the youth will present a danger to the public if the youth is not placed in a state youth correctional facility. Line 26 and 27 determine who has evaluated the youth and recommended placement. However, it has not been determined who would determine whether or not the youth would present a danger to the public. He suggested line 27 read: "has evaluated the youth and has determined that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility;".

SEN. WHEAT pointed out that decision was made by the court after the court heard all the evidence in regard to crimes committed as well as the evaluation of the mental health provider.

SEN. MCGEE questioned whether line 28 should include the language, "and the court determines".

Substitute Motion: **SEN. PERRY** moved that **HB 156 BE AMENDED** to incorporate the wording "and the court finds that".

Substitute Motion: **SEN. O'NEIL** moved that **HB 156 BE AMENDED** by striking the language following the word "public" on line 28 and 29. This would read: "and the court finds the youth presents a danger to the public".

Ms. Lane reminded the Committee to look at line 19 to mirror the existing language.

SEN. O'NEIL withdrew his amendment.

Vote: The motion carried unanimously.

Substitute Motion: **SEN. O'NEIL** moved that **HB 156 BE AMENDED** by striking the language following the word "public" on line 28 and 29. This would read: "and the court finds the youth presents a danger to the public".

Ms. Lane explained the language on line 27 would read: "and the court finds that the youth presents a danger to the public."

Vote: The motion failed with O'NEIL voting aye.

Motion/Vote: **SEN. MANGAN** moved that **HB 156 BE CONCURRED IN AS AMENDED**. The motion carried unanimously.

EXECUTIVE ACTION ON HB 210

Motion: **SEN. MCGEE** moved that **HB 210 BE CONCURRED IN**.

Substitute Motion: **SEN. MCGEE** moved that **HB 210 BE AMENDED**, HB021001.avl, EXHIBIT(jus50a03).

Discussion:

SEN. MCGEE explained that on line 27, following the word "voluntarily", language be inserted to read: "may move to withdraw the plea. If the motion to withdraw is denied, the defendant".



SENATE STANDING COMMITTEE REPORT

March 10, 2003

Page 1 of 2

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 156** (third reading copy -- blue) be concurred in as amended.

Signed:

Senator Duane Grimes, Chair

To be carried by Senator Jeff Mangan

And, that such amendments read:

1. Page 1, line 24.

Following: "FOUR"

Insert: "or more"

2. Page 1, line 25.

Strike: subsection (II) in its entirety

Renumber: subsequent subsections

3. Page 1, line 26.

Following: "PSYCHIATRIST"

Strike: "1"

Insert: "or a"

Following: "PSYCHOLOGIST"

Strike: "1"

Insert: "licensed by the state or a licensed clinical"

Following: "COUNSELOR"

Strike: "1"

Following: "OR"

Insert: "a licensed clinical"

Following: "WORKER"

Strike: "LICENSED BY THE STATE"

4. Page 1, line 28.

Committee Vote:

Yes 9, No 0.

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March 10, 2003

Page 2 of 2

Following: the first "THE"
Insert: "court finds that the"

- END -

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MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 3-10-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

Amendments to House Bill No. 156
3rd Reading Copy

Requested by Representative Gary Matthews

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 10, 2003 (9:13am)

1. Page 1, line 26.

Following: "PSYCHIATRIST"

Strike: "and"

Insert: "or a"

Following: "PSYCHOLOGIST"

Strike: "and"

Insert: "licensed by the state or a licensed clinical"

Following: "COUNSELOR"

Strike: "and"

Following: "OR"

Insert: "a licensed clinical"

Following: "WORKER"

Strike: "LICENSED BY THE STATE"

- END -

SENATE JUDICIARY
Exhibit No. 30
Date 3-6-03
Bill No. HB 156

Amendments to House Bill No. 156
3rd Reading Copy

Requested by Representative Gary Matthews

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 10, 2003 (1:19pm)

1. Page 1, line 24.

Following: "FOUR"

Insert: "or more"

2. Page 1, line 25.

Strike: subsection (II) in its entirety

Renumber: subsequent subsections

3. Page 1, line 26.

Following: "PSYCHIATRIST"

Strike: " "

Insert: "or a"

Following: "PSYCHOLOGIST"

Strike: " "

Insert: "licensed by the state or a licensed clinical"

Following: "COUNSELOR"

Strike: " "

Following: "OR"

Insert: "a licensed clinical"

Following: "WORKER"

Strike: "LICENSED BY THE STATE"

4. Page 1, line 28.

Following: the first "THE"

Insert: "court finds that the"

- END -



AN ACT REVISING THE ABILITY TO PLACE A YOUTH ADJUDICATED DELINQUENT FOR AN ACT THAT WOULD BE A MISDEMEANOR IF COMMITTED BY AN ADULT IN A STATE YOUTH CORRECTIONAL FACILITY; AND AMENDING SECTION 41-5-1513, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-1513, MCA, is amended to read:

"41-5-1513. Disposition -- delinquent youth -- restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. ~~The court may not place a youth adjudicated delinquent in a state youth correctional facility for an offense that would be a misdemeanor if committed by an adult unless the court finds that the youth presents a danger to the public safety and that the placement is recommended by a mental health professional after evaluation of the youth.~~ The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register as

a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sex offense, the youth court may require completion of sex offender treatment before a youth is discharged.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel."

- END -